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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

MUNICIPALITY OF ANCHORAGE, Plaintiff, v. INTEGRATED CONCEPTS AND RESEARCH CORPORATION, a corporation; PND ENGINEERS, Inc., a corporation; CH2M HILL ALASKA, Inc. a corporation; and GEOENGINEERS, INC., a corporation, Defendants.	Case No. 3:13-cv-00063-SLG **FIRST AMENDED COMPLAINT**

Plaintiff, Anchorage, a Municipal Corporation (hereinafter, "Plaintiff" or "MOA"), by and through its undersigned attorneys, for its First Amended Complaint alleges the following:

INTRODUCTION

1. This is an action by the Plaintiff against Defendants, Integrated Concepts and Research Corporation ("ICRC"), PND Engineers, Inc. ("PND"), CH2M Hill Alaska, Inc., formerly known as VECO Alaska, Inc. ("VECO" or "CH2M Hill Alaska") [1], and GeoEngineers, Inc. ("GeoEngineers") for monetary relief.

PARTIES

2. Plaintiff, Anchorage, is a home-rule municipal corporation duly organized and existing under the laws of the State of Alaska.

3. Upon information and belief, Defendant, ICRC, is a District of Columbia corporation, a subsidiary of VSE Corporation, with its principal place of business in Alexandria, Virginia.

4. Upon information and belief, Defendant, PND[2], is an Alaska corporation, with its principal place of business in Anchorage, Alaska.

5. Upon information and belief, Defendant, VECO, is a Delaware Corporation, with its principal place of business in Anchorage, Alaska.

6. Upon information and belief, GeoEngineers is a Washington corporation, with its principal place of business in Seattle, Washington.

JURISDICTION AND VENUE

7. Pursuant to its ruling on the motion to remand, this Court has held that jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1442(a)(1).

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[1] CH2M Hill Alaska, Inc. will hereafter be referred to as VECO.

[2] PND Engineers, Inc. was formerly known as Peratrovich, Nottingham & Drage, Inc. For ease of reference, the entity will be referred to as "PND" throughout this Complaint.

8. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391(a), because all or substantially all the events and actions of the Defendants that are the subject of this Complaint occurred within the District of Alaska.

THE PORT OF ANCHORAGE INTERMODAL EXPANSION PROJECT

Project Location and Overview

9. The Port of Anchorage opened in 1961, and has been continually in service for the past 50 years.

10. The Port of Anchorage is vital to the well-being of the entire state of Alaska. An estimated 90% of the merchandise goods for approximately 85% of Alaska's populated areas pass through the Port's facilities annually. These goods include gasoline, heating oil, cement, diesel, business supplies and most consumer goods. Additionally, the Port is designated as a Department of Defense Strategic Seaport in recognition of its vital role in supporting overseas deployments.

11. The Port of Anchorage Intermodal Expansion Project ("Project") was envisioned to be a multi-year Port infrastructure Project that would replace deteriorated and outdated facilities, expand the Port's capacity, and increase the Port of Anchorage's ability to serve the Municipality of Anchorage, the State of Alaska and the United States military. The Project work was expected to take place over several years, and involve both design and construction work to expand the Port facilities through reclamation of tidal and subtidal areas to create new property for additional waterfront facilities.

12. Anchorage, Alaska is located in one of the most seismically active areas in the world. Consequently, designers of construction projects, and in particular infrastructure projects in Anchorage, must account for this increased level of risk in designing a project.

13. Thus, the Project's design was to account for the seismic risk posed by the Project's location. The ultimate goal of any design, of course, was to keep the Port of Anchorage operational after a seismic event with minimal amount of disruptive and costly repair work.

THE CONTRACTUAL RELATIONSHIPS BETWEEN THE PARTIES

The MOA-MarAd Memorandum of Understanding

14. To accomplish their objectives, in 2003 MOA signed a Memorandum of Understanding ("MOU") with the Maritime Administration, a federal agency within the United States Department of Transportation ("MarAd") delineating the responsibilities of the parties with regard to funding and administration of the Project.

15. MarAd's responsibilities on the Project included, among other things, providing specialized technical expertise to Port Expansion tasks and activities. Indeed, MOA specifically relied upon MarAd's expertise to bring the Project to fruition. Further, MOA relied upon MarAd to contract with, and oversee, ICRC's administration of the overall Project.

16. In late 2011, a subsequent Memorandum of Agreement ("Memorandum") was executed between MarAd and MOA, which further defined their obligations.

17. For its part, MOA, as the Project owner, was focused on the programmatic needs of the Port (*i.e.*, maintenance and operation considerations, client needs, *etc.*) and how these would be considered and implemented in the Project's overall design. MOA was not responsible for the Project's technical aspects, the ultimate design and construction of the Project, or the administration of the design and construction. These aspects of the Project were undertaken by MarAd who contracted with ICRC to bring this Project to fruition. ICRC, in turn, contracted with other design/engineering firms and contractors to complete various aspects of the work.

The 2003 MarAd-ICRC Contract

18. Pursuant to its responsibilities under its MOU with MOA, MarAd first contracted with Koniag Services Inc. ("KSI"), the predecessor-in-interest to ICRC. More specifically, on May 30, 2003, MarAd awarded contract number DTMA1D03009 to KSI (the "2003 Contract").

19. Defendant ICRC later assumed responsibility for the 2003 Contract under a separate novation agreement dated February 16, 2004.[3] The 2003 Contract is an indefinite delivery, indefinite quantity ("ID/IQ") contract under which ICRC was issued Task Orders to, among other things, provide program management, design-build and related procurement services with respect to the Project's administration, design and construction.

20. The 2003 Contract contained a Statement of Work that described in broad terms, ICRC's Project responsibilities. With regard to the design portion of the Project, ICRC was responsible to, among other things:

- Identify design requirements;
- Identify and pre-qualify design firms with expertise specific to the feature or system to be designed;
- Solicit demonstrations of qualifications, including approaches, systems, control features, and available personnel from pre-qualified firms;
- Review submittals for pre-qualified firms;
- Make recommendations for selection for concurrence;
- Manage procurement of the selected firms in accordance with approved commercial purchasing procedures;
- Assist in the guidance and direction of design firms;
- Provide inspection, oversight, and management of design contractors;

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[3] For ease of reference, KSI will be referred to hereafter as ICRC, its successor-in-interest.

- Review and comment on provided designs, specifications, bid packages information, and other documents; and
- Procure, as directed by Task Order, design services.

21. With regard to construction management and construction oversight services, the 2003 Contract's Statement of Work noted, among others, the following tasks that ICRC was to undertake:

- Identify construction requirements;
- Identify and pre-qualify construction firms with expertise specific to the feature or system to be constructed;
- Solicit demonstrations of qualifications, including approaches, systems, control features and available personnel from pre-qualified firms;
- Review submittals from pre-qualified firms;
- Make recommendations for selection for concurrence;
- Procure, as directed by Task Order, construction services;
- Provide inspection, oversight and management of construction contractors;
- Provide technical and management coordination;
- Review design documents and associated materials; and
- Inspect construction activities.

22. The 2003 Contract also made ICRC liable for all damages to persons or property occurring as a result of ICRC's fault or negligence. More specifically, the 2003 Contract incorporated FAR provision 52.236-7 (Permits and Responsibilities Nov 1991), which states as follows:

> The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State and municipal laws, codes and regulations applicable to the performance of the work. **The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or**

> **negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work**, except for any completed unit of work which may have been accepted under the contract. (emphasis added).

23. The 2003 Contract contemplated MarAd's issuance of certain Task Orders, which would further delineate ICRC's obligations on the Project.

24. For example, MarAd issued Task Order 111, which provided additional detail with respect to the design-build, administrative, engineering, and construction services ICRC was to provide. Task Order 111 provides, in pertinent part, that:

> ICRC will provide qualified design engineering and technical services to assist MARAD with planning efforts, sub-project scoping and definition, overall design recommendations and design development, technical review of specifications, evaluation of cost estimates based upon current market conditions, subcontract management of architectural/engineering (A/E) firms, graphic support, Geotechnical Advisory Committee support, and solicitation preparation for the Year 4 program.
>
> * * *
>
> ICRC will provide qualified construction management services to MARAD for the expansion of the POA [Port of Anchorage] and construction related activities on EAFB [Elmendorf Air Force Base] and the POA.
>
> Construction services will include constructability review of various design documents; technically facilitate the bidding process with industry; develop, manage, and close construction Task Orders (400 series); provide evaluations to MARAD of construction cost estimates prepared by design firms and actual bid results; prepare independent cost and schedule estimates for construction works; provide technical support to contracting staff and aid in negotiations; manage construction contractors to promote delivery of construction works in accordance with design drawings, technical specifications, budget, schedule, and other contract documents…
>
> * * *

25. Task Order 112 contained similar requirements to Task Order 111, for Project Year 5 (June 1, 2007 through May 31, 2008).

26. Task Order 303 required ICRC to prepare preliminary Costs of Construction Estimates for each of the proposed Project elements; conduct an evaluation of design and constructability issues to determine the most appropriate design methods, and prepare conceptual (preliminary) plans showing designs of each major project element.

27. In short, ICRC's responsibilities pursuant to its contract with MarAd included Project administration and planning, design/engineering, constructability reviews, construction, and cost estimating for the Project.

The ICRC-PND Design Contract

28. MarAd issued to ICRC Task Order 312 (Waterfront Design), for "professional engineering services to develop bid packages for future construction activities." Pursuant to Task Order 312, ICRC was tasked with preparing a solicitation for bids with respect to the Project's design. As noted by ICRC, Task Order 312 established the Engineer of Record for the Project, who would be working under direct contract with ICRC, stating:

> The marine engineering design team will be comprised of a professional subcontracted group of experts: PND, Veco [now CH2M Hill], and GeoEngineers. This team will conduct a peer review of all geotechnical modeling performed to date by Terracon and other independent consultants, identify design criteria and performance standards, and be the responsible Engineer-of-Record for bid-ready design packages as described.
>
> * * *
>
> ICRC will contribute with direct labor to best coordinate the overall design effort and preparation of tender documents for ICRC procurement purposes.

29. ICRC prepared the solicitation and issued it for bids. ICRC recommended Defendant PND for award and thereafter ICRC contracted with PND (the resulting contract will be referred to as the "2006 ICRC-PND Subcontract" due to the multiple contracts in existence between ICRC and PND on the Project).

30. The 2006 ICRC-PND Subcontract contained a Scope of Work detailing PND's initial responsibilities for preparing the Project's design. More specifically, the Scope of Work clarifies that ICRC was "seeking professional services to prepare a bid-ready project design assembly for the North Waterfront project, preliminary engineering services, and separate bid-ready project design assemblies for follow-on construction projects."

31. The 2006 ICRC-PND Subcontract Scope of Work also provided that PND's design was required to "comply with the applicable Municipality of Anchorage seismic requirements."

32. The 2006 ICRC-PND Subcontract also noted that PND's proprietary Open-Cell-Sheet-Pile Structure ("OCSP®") had been selected from all the alternatives carried forward for impact analysis by ICRC.

33. The 2006 ICRC-PND Subcontract contained a disputes provision that could be invoked by either ICRC or PND if there was a dispute involving the contract (*i.e.*, the Project's design work).

34. The 2006 ICRC-PND Subcontract also contained an indemnification provision whereby PND was required to indemnify ICRC, and other specified entities including, but not limited to, ICRC's customers and contractors, for any and all losses and/or damages caused by PND's work on the Project.

35. The 2006 ICRC-PND Subcontract also required PND to include the Municipality of Anchorage as an additional insured on certain policies including, but not necessarily limited to, workers compensation, general liability, product liability, and "such other insurance which is necessary or prudent…"

The PND-GeoEngineers Subcontract

36. PND issued a notice to proceed to GeoEngineers dated April 6, 2006. The notice to proceed stated PND would issue a subcontract for GeoEngineers after it received a formal contract from ICRC.

37. Upon information and belief, after PND issued the notice to proceed in April 2006, PND subcontracted with GeoEngineers to provide geotechnical and design services on the Project.

38. GeoEngineers, together with PND and VECO, comprised the design team to complete the design of the OCSP® at the Project.

The 2006 PND-VECO Contract

39. On or about July 26, 2006, PND entered into a Work Order/Confidentiality Agreement with VECO, and thereby engaged VECO as a subcontractor to PND.

40. The scope of work to be performed by VECO included, among other things:

- Technical support to PND for scheduling efforts;
- Technical reviews and validation checks of PND cost estimates; and
- Technical reviews of PND global stability and geotechnical analyses.

41. The PND-VECO Contract made VECO subject to the "same Owner conditions and contractual commitments that PND is obligated to meet."

The 2008 MarAd-ICRC Contract

42. On or about July 16, 2008, MarAd awarded Contract No. DTMA1D08012 ("2008 MarAd-ICRC Contract") to ICRC to continue performance of program management and design-build related services on the Project. The 2008 MarAd-ICRC Contract contained language and requirements similar to the 2003 Contract, and also contemplated the issuance of Task Orders to further detail ICRC's expected tasks on the Project. The 2008 MarAd-ICRC Contract is an ID/IQ contract under which ICRC is to design, manage and execute construction of the Project. In 2009,

MarAd transitioned ICRC's requirements from Task Order 414 under the 2003 Contract to Task Order 3403 of the 2008 MarAd-ICRC Contract.

43. Like its 2003 counterpart, the 2008 MarAd-ICRC Contract made ICRC liable for all damages to persons or property occurring as a result of ICRC's fault or negligence. More specifically, the 2008 MarAd-ICRC Contract incorporated FAR provision 52.236-7 (Permits and Responsibilities) (Nov 1991), which states, as follows:

> The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State and municipal laws, codes and regulations applicable to the performance of the work. **The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work**, except for any completed unit of work which may have been accepted under the contract. (emphasis added).

44. The 2008 MarAd-ICRC Contract also formalized MOA's already recognized third-party beneficiary status under the MarAd-ICRC agreements. The 2008 MarAd-ICRC Contract provides, in pertinent part, that:

> E.3 ACCEPTANCE OF CONSTRUCTION
>
> Upon acceptance by MARAD of work tendered under this Contract, all right, title and interest to such work shall convey to the Municipality of Anchorage and its Department Port of Anchorage as a third party beneficiary, unless otherwise provided. All warranties and guarantees provided by the Contractor shall benefit both MARAD and the Municipality of Anchorage and its Department Port of Anchorage.

45. While MOA was a third-party beneficiary of the MarAd-ICRC agreements, all parties to the Project recognized that MOA could not direct the actions of ICRC and/or its subcontractors.

46. Further, and pursuant to its obligations under its Contracts with MarAd, ICRC was, among other things, to provide a constructability review of various design documents, which would necessarily include, a review of PND's OCSP® design and the constructability of same.

47. Upon information and belief, however, neither ICRC nor PND performed a constructability review of PND's Project design, to the overall detriment of the Project, and if such constructability review was performed, it was clearly performed in a negligent manner.

The ICRC-PND Construction Administration Subcontract

48. In a June 30, 2008 letter, PND requested that ICRC engage PND to perform an oversight role with respect to the installation of the open cell sheet piles, because, as PND noted, "[t]here are very few people outside of PND that are qualified to perform these inspections." PND asserted that it "must provide technical direction and inspection on [the OCSP work]" of the Project, to ensure that the "Open Cell structures are constructed correctly" by Quality Asphalt Paving, Inc. ("QAP") and MKB Constructors ("MKB"), the contractors ultimately engaged by ICRC to perform the work.

49. ICRC agreed with PND's request, and subsequently sought and received MarAd's approval to engage PND for the oversight role. On or about September 1, 2008, ICRC entered into Construction Administration Contract No. 3401-2-C209 (the "PND Inspection Contract"). The PND Inspection Contract was to be performed on a time and materials basis from September 1, 2008 through December 31, 2008, with an option period from January 1 through December 31, 2009.

50. Pursuant to the PND Inspection Contract, PND was, among other things, to attend construction meetings, give general consultation and technical support with respect to construction, review submittals, plans and shop drawings, prepare supporting information for change orders, respond to subcontractor requests for information, clarify design plans, perform field inspections and

on-site engineering, and advise on any abnormal conditions that may be encountered at the Project site.

51. In short, ICRC put PND in charge of supervising, directing, and inspecting the OCSP® work to be performed by ICRC's subcontractors, QAP and MKB. ICRC believed that PND's services were required "to provide direction to the construction sub-contract or regarding design intent and constructability issues," and to "correct problems with minimal impact to the project schedule and budget." The problem in placing PND in this position is PND had blinders on and was unwilling to admit or acknowledge that there were problems with PND's design and its prescriptive requirements.

The 2009 ICRC-PND Subcontract

52. In 2009, ICRC entered into an additional contract with PND (hereinafter the "2009 ICRC-PND Subcontract"). Pursuant to this agreement, PND was to provide certain construction administration and supervisory services for the Project. More specifically, PND was, among other things, to:

- Review submittals, Plans, and Shop Drawings;
- Respond to subcontract Requests for Information;
- Clarify design plans;
- Perform field inspections and on-site engineering, as needed;
- Advise on any abnormal conditions that may be encountered; and
- Serve as the Engineer-Of-Record and approve and affix its Professional Seal to record drawings.

53. The 2009 ICRC-PND Subcontract contained a disputes provision that specifically gives ICRC the contractual right to make a claim against PND for actions involving PND's work under the 2009 ICRC-PND Subcontract.

54. The 2009 ICRC-PND Subcontract, like the 2006 ICRC-PND Subcontract, contains an indemnity provision, whereby PND is required to indemnify ICRC and its customers, among others, from damages related to PND's performance of the contract. This indemnification provision also ". . .extends to and includes any claim or loss alleging acts or omissions by ICRC. . ."

The ICRC-QAP Contract

55. ICRC, as construction manager, let out the construction work it had been tasked to perform under TO 414 for competitive bid under Invitation to Bid #4414-1-S100. The Invitation to Bid provided that ICRC would award the contract based on the lowest total price submitted by responsive and responsible bidders.

56. Bids were opened on February 21, 2008 and QAP was the lowest price bid. Accordingly, ICRC entered into a contract with QAP for the performance of the Project work.

57. On February 27, 2008, Alaska Interstate Construction, LLC ("AIC"), a separate bidder for the Project work, protested the prospective contract award to QAP. AIC's bid protest was based on the concern that QAP had seriously underbid the open cell sheet pile installation, thereby disqualifying QAP from being a responsible bidder.

58. AIC's bid protest noted, somewhat presciently, that the amount QAP bid to perform the sheet pile installation "given the nature of the work required [to] successfully construct the [Project] was simply insufficient."

59. AIC's bid protest further noted that QAP and MKB lacked experience with open cell pile bulkheads. Specifically, AIC noted with respect to the open cell construction method that:

> MKB's experience is limited to a single small project built over 20 years ago. This project was in the Valdez inner harbor, in conditions nowhere near as challenging as those presented in the Port of Anchorage. QAP has no independent experience whatsoever in this type of work.

60. Notwithstanding AIC's bid protest, ICRC and MarAd elected to proceed with QAP as a subcontractor to ICRC. Consequently, ICRC formally denied AIC's bid protest on March 6, 2008.

61. On March 19, 2008, ICRC entered into Contract #4414-1-C170 2008 Marine Terminal Redevelopment with QAP pursuant to which QAP was to perform certain earthwork and sheet pile bulkhead work at the Project (the "ICRC-QAP Subcontract"). The ICRC-QAP Subcontract is a Fixed Price, Not-To-Exceed subcontract comprised of lump sum and unit price bid items with estimated unit quantities.

62. The ICRC-QAP Subcontract made QAP responsible for the prosecution of the Project Work, including all means and methods of performance; however, the Subcontract contained prescriptive requirements which dictated QAP's method of performance.

The QAP-MKB Subcontract

63. On March 31, 2008, QAP entered into a contract with MKB Constructors, a joint venture comprised of three Washington State corporations, D.M. Moor Constructors, Inc., Derian, Inc., and R. Scott Constructors, Inc. ("MKB") (the "QAP-MKB Subcontract"). The QAP/MKB Subcontract, Contract #4414-1-S100, was for the lump sum amount of $16,539,252.00.

64. MKB was to provide the sheet pile installation required by PND's OCSP® design, which was the most difficult and critical part of the Project work.

65. The QAP-MKB Subcontract provided that MKB would have adequate access for its equipment and personnel to the granular fill dike that would be constructed by QAP as part of its Project scope of work.

66. Further, the QAP-MKB Subcontract noted MKB's intent to build the Barge Berths during the 2008 construction season, and the North Extension during the 2009 construction season.

PRE-CONSTRUCTION DESIGN OF THE PROJECT

The Selection of the Project's Design

67. In 1999, MOA developed a Master Plan (the "1999 Master Plan"), which identified the anticipated operational necessities for the Port through the year 2020.

68. Demand for the Port's services grew faster than forecasted in the 1999 Master Plan, and by 2005 the Port was operating at an average of 18% above its Sustainable Practicable Capacity.

69. Throughout 2002, several exploratory design studies were undertaken in furtherance of the 1999 Master Plan. Design options considered included, but were not limited to, a pile supported pier and a sheet pile system. No decision regarding the selection of the Project's design were made at that time.

70. In 2003, in recognition that the Port's facilities were in a deteriorated condition and had surpassed their useful lifecycle, and recognizing that they lacked the technical expertise to move the Project work forward, MOA signed the aforementioned MOU with MarAd to undertake a rehabilitation and expansion of the Port.

71. The Project utilizes funding from multiple federal, state and local sources. The federal and non-federal funds for the Project are administered by MarAd pursuant to SAFETEA-LU, Public Law 109-59, § 10205.[4]

72. As discussed above, in 2003, MarAd also contracted with Defendant ICRC, who helped with the refinement of the Port expansion plan, and undertook a detailed analysis of the multiple proposed design options.

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[4] The relevant provision requires, "[a]ny funds provided for the Federal share, and any funds provided for the non-Federal share, for an intermodal transportation maritime facility at the Port of Anchorage, Alaska, or for access to that facility shall be transferred to and administered by the Administrator of the Maritime Administration."

73. In March 2005, pursuant to its contract with MarAd, ICRC undertook a comprehensive Environmental Assessment (the "EA"). As part of that undertaking, MarAd (through ICRC) performed a comprehensive analysis to screen proposed Project design alternatives.

74. As part of that analysis, ICRC recognized and understood that certain critical needs would have to be addressed by any Project design to satisfy MOA's operational needs including, but not necessarily limited to:

- Necessary replacement of obsolete infrastructure;
- Ability to withstand harsh environmental conditions;
- Ability to maintain operational capacity following a seismic event;
- Additional capacity to accommodate growth in current customers;
- Additional berths to provide service to new customers;
- Deeper drafts, longer berths, larger cranes for offloading, and more streamlined intermodal transportation to efficiently handle new ships and to move the increasing amounts of cargo out to the public;
- Lighting, gates, and other features to meet the heightened security requirements under new Maritime Security mandates; and
- Additional space and an improved berth to support military rapid deployments without conflicting with commercial customers.

75. The selection of a proper design for the Project was predicated upon a screening process in which ICRC identified three steps of importance in narrowing down an appropriate design: (1) the existing Port represented the best location for expansion; (2) the creation of an additional 135 acres or Port property with an 8,800-foot long dock face met the necessary size requirements; and (3) expansion parallel to and along the existing Port represented the most practical and feasible approach.

76. With these considerations in mind, ICRC considered alternative construction designs for the expanded Port facilities.

77. Thus, in the March 2005 EA, ICRC evaluated six potential approaches for the Project:

- Island Fill with Trestles;
- 100 Percent Pile Supported Dock;
- Pile Support Dock with Slope;
- Sheet-Pile Design;
- Pile-Supported Dock with Fill; and
- Combination Sheet Pile Design with a Pile-Supported Dock Area.

78. The first three options listed above were not carried past the March 2005 EA for evaluation because each, for various reasons, was deemed by ICRC to have structural issues, operational considerations, engineering concerns, or other construction related impacts, all of which made those design approaches not technically feasible.

79. The remaining three design approaches were evaluated by ICRC and MarAd in greater detail in the March 2005 EA. ICRC and MarAd noted that any one of these three alternative design methods could meet MOA's stated purposes and needs.

80. In the March 2005 EA, ICRC concluded that the construction logistics and management of a sheet pile design would be less complex than the other alternatives. ICRC further concluded that the sheet pile design required less maintenance than a pile-supported design and allowed for a more efficient cathodic protection system.[5]

81. Following this assessment, ICRC recommended the open cell design as the preferred alternative for use on the Project.

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[5] "Cathodic protection" is a process for reducing or eliminating corrosion on a metallic structure in contact with a corrosive electrolyte (seawater), by introducing an electrolytic action greater in strength and opposite in direction to the electrolytic activity (corrosion), than would otherwise take place. Cathodic protection is simply a way of minimizing the current by overpowering it with a stronger current from an external source.

82. Once the preferred design alternative was selected, a design solicitation was conducted. ICRC then recommended the selection of PND's proprietary Open Cell Sheet Pile ("OCSP®") design.

83. PND, GeoEngineers, and VECO then independently re-evaluated available soil information and seismic parameters, developed final designs for the OCSP® structures, and analyzed the proposed design using limit-equilibrium and two-dimensional (2D) finite element methods.

84. PND as part of its design efforts contracted with Defendant VECO to perform certain stability analyses underlying the use of the OCSP® system.

85. VECO's scope of work included, among other things:

- Reviewing publications describing the geology around the Port of Anchorage;
- Reviewing geotechnical data and other laboratory test data;
- Reviewing the site specific seismic hazard analysis performed by Youssef Hashash and reported to MOA Geotechnical Advisory Commission on June 23, 2005;
- Discerning appropriate soil properties for stability analyses based on field and laboratory test data;
- Performing stability analyses of the OCSP walls; and
- Developing conclusions regarding post-construction long-term static stability and seismic stability of soil supporting the OCSP walls.

86. VECO issued a written report in or about March 2007. VECO's report concluded, *inter alia*, the following:

> [The] OCSP walls for the POA expansion project will be able to withstand the seismic events described in the June 29, 2004 MOA Port of Anchorage Seismic Design Committee resolution. That is, all of the OCSP walls will be able to withstand: 1) an operating level earthquake (OLE) with a seismic motion that has a 50 percent probability of exceedance in 50 years (corresponding to an average return period of 72 years) and have very little damage, and 2) a contingency level earthquake (CLE) with this seismic motion has a 10 percent

> probability of exceedance in 50 years (corresponding to an average return period of 475 years) and only receive damage that is economically repairable and not life threatening.

87. In short, VECO's report represented that the PND OCSP® system was suitable for use at the Project site. VECO's report was used and relied upon by ICRC, PND, GeoEngineers, and MarAd to push the use of the OCSP® system toward final design and construction.

88. Based on the design evaluations performed by and for ICRC, ICRC contracted with PND, and PND subcontracted with GeoEngineers, to move the Project's design to a stage in which contractors could be engaged to perform the actual Project construction work.

89. In or around March 2008, PND and GeoEngineers issued a Geotechnical Analysis Report which concluded, in pertinent part:

- The OPEN CELL wall is appropriate for the Port expansion.
- If constructed as designed with the analysis assumptions stated in this report, the OPEN CELL wall is internally stable and has adequate factor of safety for global stability under both static and seismic loading.
- The OPEN CELL wall is an easy-to-construct structure which has been proven effective both in the immediate region, in other ports of Alaska and in other ports of the world.

90. PND's and GeoEngineers' March 2008 Report also concluded that the OPEN CELL design should be able to remain operational following certain seismic events.

91. The Administrator of MarAd, Sean T. Connaughton, described ICRC's intimate and critical role in analyzing the viability of the sheet pile design as follows:

> ICRC is facilitating the work of their subcontractors and managing internal controls for a $3M independent review and peer review procedures of a $7M design program.
>
> * * *
>
> This independent review of all geotechnical engineering, seismic parameters, design earthquakes, safety factors, and structural design cannot be interrupted. . .

92. Thus, MOA relied upon ICRC (and its consultants and their sub-consultants -- PND, GeoEngineers, and VECO) for such analysis and validation of the OCSP® design recommended by ICRC.

93. As discussed below, the conclusions reached by ICRC, PND, GeoEngineers, and VECO with regard to the appropriateness of the OCSP® system at the Project and static and seismic stability were wrong, false, and negligent.

The OCSP® Design Concept As Applied to the Project

94. The OCSP® concept involves the installation of a steel sheet pile bulkhead and tail walls. The sheet piles are vertically arranged steel structures that act as a horizontally-tied membrane to retain soil. The bulkhead features a vertical flat sheet pile anchor wall (tail wall) to restrain a curved flat sheet pile arch face. Fill is then placed in the open cells creating additional Port property. For reference, an illustration of the OCSP® technology is attached hereto as **Exhibit A**.

95. The OCSP-related parts of the Project, as designed, were to take place in phases including, as is pertinent here, the construction of the Dry and Wet Barge Berths (collectively, the "Barge Berths"), and the North Extension.

96. The construction of the Barge Berths phase of the Project included the work necessary to create a bulkhead consisting of 39 open sheet pile cells that would be driven into the native soils in accordance with the Project's design and then backfilled to create new property for the Port. The first cell would be installed furthest from the existing Port facilities with the 39th cell constituting a closure cell between the Barge Berths portion of the Project and the North Extension phase of the Project.

97. Cells 1 through 26 of the Barge Berths phase are called the "Dry Barge Berth" because the existing fill elevation for these cells is at the approximate elevation of +10 Mean Lower Low Water ("MLLW") and, therefore, constitute dry land during low tide.[6]

98. Cells 27 through 39 of the Barge Berths phase comprise the "Wet Barge Berth" so named because the cells are at or within the MLLW elevation.

99. The North Extension phase of the Project consists of the construction of a bulkhead comprised of 65 open cells. Cell number one of the North Extension phase is directly adjacent to cell number 39 of the Barge Berths phase (*i.e.*, the closure cell), and cell number 65 is the nearest cell to the existing dock at the Port.

100. Prior to driving the North Extension sheet piles, the bulkhead footprint was to be dredged in accordance with PND's design. The dredging also involved the excavation of an additional sub-trench where driving was expected to be particularly difficult.

101. After the dredging work, the work involved the placement of granular fill to form a dike. The toe of the dike was to stretch beyond the wye-line. This dike was then to be used as the base of the expanded Port, as well as a work platform for construction of the bulkhead.

CONSTRUCTION OF THE PROJECT

The 2007 Construction Work

102. As originally planned, the 2007 construction season was to involve the placement of earthen fill material and the placement of the first sections of open cell sheets.

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[6] The MLLW is the average of the lowest tide recorded at a tide station each day during a given recording period. Thus, a value of +10 MLLW indicates that during high tide, the water level is 10 feet higher than the MLLW.

103. A portion of the 2007 Project work known as the "North Backlands" work was advertised and awarded to Alaska Interstate Construction, LLC ("AIC"), who was also awarded the Dry Barge Berth work, but only as it related to the construction of an earthen dike.

104. During this phase of the Project, ICRC approved the placement of armor rock upon and under the fill slope as tidal protection. ICRC would also approve the placement of additional armor rock in the Dry Barge Berth.

105. Due to tidal forces, this armor rock later migrated into the footprint of the future installation of Cells 1-38 of the Wet Barge Berth OCSP®. This armor rock was not removed before the commencement of sheet pile driving.

106. ICRC's decision to permit AIC to use armor rock would have disastrous consequences for the Project during the installation of the sheet piles.

107. As early as November 2007, ICRC was aware that this armor rock was being washed out beyond the plan depicted fill footprint.

108. Neither PND nor ICRC, however, accounted for the displaced armor rock as the Project moved forward. This is evidenced by the fact that the 2008 bid documents for the Marine Terminal Redevelopment Project (which was awarded to QAP and included the OCSP® elements for the Dry Barge Berth, the Wet Barge Berth, and the entire North Extension), did not identify possible issues related to the buried armor rock, or possible rocks deposited outside of the plan footprint by "ice plucking."[7]

109. Further, during this phase of the work, AIC was expected to dredge along the face of the cells prior to placing a rock fill to stabilize the Project site for the winter. The intention behind

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[7] "Ice plucking" is a type of erosion that results from the relative buoyancy of ice, combined with the material being "plucked." This can occur anywhere ice is in contact with hard armor erosion control rocks that have the potential to be moved by flowing water, gravity, or wave action.

this dredging was to remove the soft soil layer for structural stability and to minimize the depth of penetration through the underlying hard clay layer.

110. For unknown reasons, ICRC decided not to pre-dredge, especially along the face of cells 27-38 of the Barge Berths area of the Project prior to the placement of the rock fill. The lack of pre-dredging in these areas resulted in some of the longest pile penetration and most difficult pile driving of the Project.

The 2008 Project Construction Work

111. The typical in-water construction season at the Project site is effectively limited from mid-March through November because of the hazardous ice flows, extreme weather, and short daylight conditions occurring from December through February.

112. The 2008 construction season was scheduled to commence in the spring of 2008, and be closed out to accommodate the 2008-2009 winter shutdown.

113. As the 2008 construction season progressed, it became apparent that the parties were having difficulty constructing the Project in accordance with the Project's design.

114. The North Extension work involved the placement of granular fill to form a dike, which was then to be used as the base of the expanded Port, as well as a work platform for construction of the bulkhead.

115. QAP was responsible for the construction of this dike in accordance with PND's Project design. As required by its contract with ICRC, QAP submitted a dike construction plan.

116. PND's as-designed plans for the dike show the tidal slope of the dike to be 1.5:1 (1.5 feet horizontal to 1 foot vertical). PND's as-designed slope proved to be unstable given the Project site's water table elevation and the tidal influence of saturation and draining, as well as the use of vibratory equipment (which was also required by PND's design).

117. Upon information and belief, QAP was required to prepare a dike plan in accordance with PND's design requirements, but ICRC never had PND approve QAP's dike plan. Upon further information and belief, despite the lack of an approved submittal, ICRC permitted QAP to proceed with the construction of the dike.

118. As discussed in detail below, ICRC and PND's failure to have an approved dike plan showing a properly stabilized dike, coupled with PND's design errors, would create multiple problems for QAP's pile driving subcontractor, MKB, due to the movement of the granular fill during pile driving activities.

119. PND representative, Garth Howlett, acknowledged that the determination of a stable angle for the granular fill dike was left to QAP's means and methods, rather than an exact calculation. Indeed, PND never required QAP to prove that the slope of the fill would be stable at PND's prescribed designed slope, or should be anything other than the 1.5 feet horizontal to 1 foot vertical shown in PND's Project design.

120. Neither PND nor ICRC independently confirmed that the fill would be stable at the designed slope. Indeed, as late as January 2011, PND was still unsure as to whether anyone had analyzed the stability of the granular fill or had simply assumed that the slope would work.

121. In early June 2008, QAP began construction of the dike. QAP constructed the granular fill dike using PND's as-designed 1.5 feet horizontal to 1 foot vertical slope angle. As noted above, ICRC's failure to have PND approve the construction plan, and the failure of ICRC and PND to confirm the stability of the slope, would lead to further difficulties with the installation of the steel sheet piles during the performance of the Project.

122. During the Project, the unstable slope of the fill contributed to a phenomenon known as "iron binding," which was associated with the seaward migration of the dike fill. Iron binding

significantly increases sheet pile driving difficulty due to a pressure imbalance between conditions inside and outside of the cell. Iron binding also masks the presence of obstructions.

123. The sheet piles used to construct the cells of the North Extension portion of the Project varied in length from 70 feet to 90 feet. The sheet piles used to construct the tail walls of the cells of the North Extension portion of the Project varied in length from 35 feet to 90 feet.

124. The 90 foot sheet pile lengths are nearly twice as long as those used for previous open cell sheet pile projects. Further, PND's own literature explains that sheet lengths exceeding 24 meters (78 feet) exceed the "practical limit" of OCSP® construction.

125. PND's literature also warns that, even with sheet lengths much shorter than those specified for use on this Project, "[i]f very deep driving is required difficulty can almost always be expected."

126. Thus, the Project's contractors, QAP and MKB, were already faced with installing sheet piles in excess of the "practical limit" established by PND.

127. Despite ICRC's and PND's knowledge of the hard driving conditions, neither ICRC nor PND conducted an adequate site investigation to determine the soil strength, stability and suitability for the use of the OCSP® design.

128. Indeed, and upon information and belief, neither ICRC nor PND performed a constructability review of the design, and if they did, such constructability review was not adequate or sufficient.

129. Further, neither PND nor ICRC required QAP or MKB to submit alternative means and methods for the performance of the pile driving work despite a warning on the Project's drawings that such alternative methods would likely be required.

130. MKB began pile driving efforts on or about July 15, 2008.

131. Less than two weeks after beginning construction, MKB began to assert defects in the Project's design and, more specifically, with PND's as-designed radius between the wye piles.[8]

132. Indeed, as a result of the wye radius issue, MKB purportedly threatened to walk off the Project. MKB would later clarify that, with respect to MKB walking off the site, MKB couldn't "install the cells to plan so if ICRC does not approve the change to the radius [MKB] cannot continue with the work."

133. The parties agreed to modify the wye radius, a problem that ICRC attributed to a defect in PND's design. Unfortunately, this design defect was not remedied before the issue impacted (at least in part) both the Project's cost and time.

134. Following the resolution of PND's wye radius design error, MKB continued to experience issues with sheet pile installation throughout the summer and fall of 2008, most notably with difficult sheet pile driving conditions and Project safety.

135. Many issues that impacted the Project work are indicative of the lack of Project oversight, quality control, and quality assurance methods in place on the Project; issues for which ICRC and PND were responsible.

136. For example, and with regard to safety, MKB had five serious incidents, which called into question MKB's ability to properly and safely install the sheet piles.

137. On July 16, 2008, a sheet pile wye hung up on a weld connection during MKB's construction efforts. The pile was released so that the crane supporting the pile could be used for a different purpose. Upon release, the pile fell, striking an occupied man-basket and driving the basket

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[8] The "wye piles" essentially serve as connectors between the sheets comprising the face of the open cell and the sheets comprising the anchor wall (tailwall) of the open cell.

into the crane. The individual in the crane suffered a sprained back. The sheet pile and a wye connector were damaged beyond repair and could not be used on the Project.

138. On July 31, 2008, a sheet pile again became stuck during MKB's construction efforts. The crane operator lifted and dropped the sheet pile several times in an attempt to move past the obstruction. The cable holding the sheet pile became separated from the crane rigging and began to fall toward an occupied man basket. The crane operator was able to deflect the falling pile with the crane's hook, preventing likely injuries to the man in the basket.

139. On August 28, 2008, while driving sheets on cell number 2, the rigging strap holding MKB's vibratory hammer failed and the hammer fell inward bending approximately 7 sheet piles. Six of the sheet piles were damaged beyond repair.

140. On August 29, 2008, during stabbing operations on tail wall Z, adjacent to Cell 27, a section of the tail wall from the wye to the intermediate anchor were all stabbed. When the crane released the intermediate anchor, the entire tail wall fell toward the walkway and ending up leaning against the walkway.

141. In early November 2008, MKB also encountered difficult driving conditions with respect to Cells 36, 37 and 38 of the Wet Barge Berth, and were claiming approximately 1,200 blows per foot of movement for the sheet piles. As a result, the sheet piles for these cells incurred substantial damage. ICRC and PND, however, persisted in letting QAP and MKB continue their fruitless installation efforts.

142. The parties would later learn that the difficult driving conditions of cells 36-38 of the Barge Berth were caused, in part, by rock obstructions.

143. As noted above, these rock obstructions resulted from AIC placing, with ICRC's approval, boulders in the dike material and in areas of the Project that were to later be the site of sheet pile driving.

144. ICRC was aware that this rock was being washed out beyond the plan depicted fill footprint as early as November 2007, but attempted to deny any knowledge of this rock, despite the fact that it had contracted for, and approved its placement.

145. The hard driving conditions MKB experienced should have triggered a detailed examination of the work site in the fall of 2008, including dredging followed by diving inspections of the work. For unknown reasons, neither PND nor ICRC ordered such investigations to take place until the fall of 2010.

146. Indeed, under a separate 2010 procurement, inspection dredging was performed which identified the presence of the large non-native rock that ICRC had permitted AIC to install during the 2007 construction season. As discussed above, the armor rock and considerable riprap placed as temporary, overwinter slope protection, had subsided within the dike prism as a result of sloughing due to extreme tide fluctuation and heavy buildup of sea ice and snow.

147. Neither QAP nor MKB were made aware by PND or ICRC that they should anticipate the large armor rock that had been placed by AIC during the 2007 construction season. Indeed, neither QAP nor MKB could have anticipated that the armor rock would have migrated out of the footprint shown on the Project plans.

148. When faced with the high blow counts MKB was experiencing, ICRC and PND insisted that the piles be driven to PND's design-specified depth, and expressed no concern over potential sheet damage, even though both PND and ICRC were likely aware or should have been aware that considerable damage to the sheet piles was occurring.

149. As the 2008 construction season came to an end, it became apparent that ICRC and PND were less concerned with finishing the Project, and were more concerned with covering themselves against liability and attempting to shift blame to other Project participants.

The 2008-2009 Winter Shutdown and Completion of the Dry Barge Berth

150. Neither PND nor ICRC used the winter shutdown period to revisit the Project's design, including the slope of the dike that had caused the sheet piles to experience iron binding associated with the seaward migration of the dike fill.

151. Indeed, the "work platform" concept that involved driving the sheet piles with cranes stationed upon the granular fill dike was specifically called out in the Project specifications prepared for and approved by PND and/or ICRC.

152. Later studies would show that PND's calculations for the slope fill comprising the work platform were wrong. Indeed, according to these studies, the slope angle below the phreatic water level[9] should have been expected to be stable at 16 degrees (or roughly half of what PND's drawings showed).

153. PND's design error would later be corrected in revised drawings issued to the follow-on contractor hired by ICRC in 2010.

154. The 2008 winter season also saw the completion of the Dry Barge Berth, when the fill contained in these cells was densified by Vibracompaction and a steel cap and fenders were installed completing the Dry Barge Berth.

155. On March 3, 2009, PND sent a letter to ICRC noting its "serious concern" about the soundness of the sheet piles installed during the 2008 construction season, and particularly with

[9] The phreatic water level refers to that elevation below which the ground is completely saturated with water.

regard to potential damage at the bottom of the piles or having the sheets being driven out of interlock. ICRC would not address PND's concern with QAP until approximately two months later.

The 2009 Project Construction Work

156. The 2009 construction season also witnessed multiple examples of deficient design and defective construction.

157. In early 2009, the parties began to discuss the use of other methods to expedite the installation of the sheet piles into the hard soils. Despite their lack of experience with the technology, MKB suggested, and ICRC approved, the use of jetting for the installation of the sheet piles.[10]

158. In May 2009, during a meeting to discuss the installation of the sheet piles, the parties discussed the fact that jetting would not work in hard soil conditions like those present at the Project site.

159. Despite the admonition from PND's representative that jetting would not work, ICRC and PND still permitted QAP and MKB to attempt jetting on the Project, instead of helping the contractors design an installation methodology that would actually work.

160. In late May 2009, ICRC advised QAP that uncovering and inspection of the work at the southern end of the Wet Barge Berth (Cells 27 through 38) was necessary based upon PND's review and concern with QAP's pile driving records.

161. Despite being notified of such concerns, QAP took no steps to confirm whether the work at the southern end of the Wet Barge Berths was impacted by the excessive pile driving, particularly with respect to Cells 36 through 38.

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[10] "Jetting" refers to a procedure in which high-pressure water jets are used to remove material at the toe of a sheet pile to assist in the installation of the pile.

162. In May 2009, MKB began driving sheet piles in the North Extension area of the Project and, specifically in those areas where dense clay was noted on the design drawings (cells 10/11 and 39/40).

163. While performing this work, MKB began to experience problems driving the sheet piles in accordance with the as-designed locations.

164. Upon information and belief, MKB experienced difficulties in maintaining the locations of the sheet piles due to, among other things, the as-designed slope of the granular fill dike.

165. Pile driving into the toe of the granular fill dike caused instability in the granular fill material and caused a flattening of the slope. Once the tips of the sheet piles cleared the granular fill dike and entered the underlying native soils, it created a pressure imbalance between the inside and outside of the cell, a phenomenon previously noted as "iron binding" in the sheets, which caused MKB great difficulty in driving the sheets to their proper depths.

166. ICRC's and PND's failure to require QAP to properly provide a stable granular fill slope was directly related to the problems MKB was experiencing on the Project. More specifically, ICRC and PND failed to require QAP to verify the stability of the granular fill slope, or to place shoreblock mats to provide soil retention in the areas where MKB was experiencing difficulty.

167. QAP and MKB also contended that the hard clays were impacting their ability to drive the sheet piles. Rather than properly address the situation by, for example, devising additional pile driving methods, or revising the Project's design to accommodate the actual site conditions, the parties to the Project began pointing fingers at one another and continued upon the same course that had created problems during the 2008 construction season.

168. The progress was so slow, that by August 2009, QAP submitted a schedule showing substantial completion of the Project work occurring in July 2010 instead of November 2009. On

August 21, 2009, ICRC rejected this schedule. ICRC's letter rejecting QAP's schedule also noted that QAP would be liable for any costs incurred by MarAd or the Plaintiffs due to the slow progress of the work.

169. A month later, however, instead of requiring QAP to perform its agreed-upon Project work, ICRC agreed to permit QAP to de-scope North Extension cells 1-7 and Outfall A (and associated vibrocompaction) from QAP's scope of work.

170. To document the descoping and close out of QAP's subcontract with ICRC, ICRC issued, and QAP and ICRC signed, Change Order Nos. 15 and 17. MarAd approved Change Order No. 15, but delayed execution of Change Order No. 17.

The Reprocurement for the 2010 Construction Work

171. At the close of the 2009 construction season, ICRC, with the assistance of PND, issued a solicitation with markedly different design specifications and assumptions to reprocure the Project work.

172. It became apparent, however, that even three years after the Project's design had been vetted and selected, neither PND nor ICRC could determine how to make PND's design work on the Project, preferring instead to use a trial-and-error "design as you go" approach.

173. ICRC contracted with West Construction to: (1) perform vibracompaction work that had been descoped from QAP's scope of work by Change Order 15; and (2) to complete the work previously awarded to QAP, which was proposed to MarAd for descoping in Change Order 17.

174. Major changes were made to the scope of work awarded to West Construction. For example, while the ICRC-QAP Subcontract provides no significant reference to soil movement or damage to the sheets caused by pile driving, the April 2010 Solicitation is replete with warnings and disclaimers, as well as refined specifications for alternative construction means, methods, and

procedures which were specifically tailored to mitigate the design deficiencies encountered by QAP/MKB.

175. The new specifications permitted the contractor to drive piles from a water-based platform, rather than using the granular fill dike as a "work platform."

176. Further, the new specifications provided bracing details and a pile-driving sequence to deal with iron-binding not found in the specifications provided to QAP and its pile driving subcontractor, MKB. More specifically, the specifications provided that the contractor was not to "keep driving" in the face of difficult driving conditions, but rather was directed to probe to final tip elevation to determine if the problems with driving were being caused by iron binding.

177. To mitigate soil movement and the potential for iron binding, the 2010 work solicitations required the contractor to submit a fill placement plan, which indicated "fill graduation requirements, protective or ballasting materials, slope limits, etc., as necessary for dike stability, erosion protection and sheet pile construction."

178. The revised design also eventually removed the "work platform" concept (using the unstable dike) and required step excavation of the fill slope to prevent soil movement where pile driving had not yet occurred. The "work platform" omitted from the 2010 design had been one of the major components of PND's design when QAP/MKB had been tasked with the performance of the work.

179. The new specifications also required predrilling at all interlock locations, which ICRC has acknowledged represented a deviation from PND's original design.

Additional Problems with the Earlier Work are Discovered
During the 2010 Construction Season

180. ICRC awarded West Construction a contract to perform the 2010 Construction work. The work consisted of the installation of a new OCSP® bulkhead, completion of cells partially

constructed in 2009, removal and replacement of cells not installed to design specifications, and installation of storm drain outfalls.

181. West Construction removed all granular fill material from the driving plane and dredged the Bootlegger Cover soils to within five to ten feet of final tip elevation and then spudded.[11]

182. West Construction was required to lay the slope of the dike fill down from the 1.5 horizontal to 1 vertical to a more stable slope of 4 horizontal to 1 vertical, pull the fill toe back to a position east of the face sheets, dredge the foot print to inspect previously driven sheets, and finally drive the sheets. This meant that West was required to drive the sheet piles through 10-feet of hard clay, which was far less than the soil column that MKB contended with during its installation work.

183. West uncovered additional problems while performing inspections of previously installed sheet piles. Consequently, West's scope of work was significantly altered.

184. For example, the reinstallation of Wet Barge Berth Cells 36-38, and the installation of North Extension Cells 33-39 were all removed from West's scope of work.

185. The roughly $30 million ultimately paid to West Construction in 2010 (with full knowledge of the difficulties experienced during the 2008 and 2009 construction seasons to install the OCSP®) to perform sheet-pile extraction, excavation, temporary Z-wall and crane pad construction, and installation of only four replacement cells, demonstrates convincingly that ICRC and PND vastly underestimated and misrepresented the costs, ease, and feasibility of using the OCSP® system on this Project.

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[11] "Spudding" is the driving of a short and stout section of pile-like material into the ground to punch through or break up hard ground strata to permit easier driving of the sheet piles.

186. West would end the 2010 construction season by installing temporary Z-pile walls to preserve the Project's stability while MarAd, ICRC, and PND worked to figure out a constructible design.

2010 Inspections Show Large-Scale Damage and Defective Work

187. Throughout the Project, ICRC and PND repeatedly failed to require QAP and/or MKB to follow the Project specifications. By way of example, and without limitation, QAP and/or MKB installed piles out of plumb, without proper bracing, with leads in excess of five feet between piles or backfilled cells without regard for the fill levels of adjacent cells.

188. Also, by way of example, inspections revealed the interlock integrity of the sheet piles in numerous instances were severely compromised. Neither ICRC nor PND ever developed during the Project the necessary inspection protocol to verify interlock integrity.

189. In addition, at the Wet Barge Berth, damage was present in every cell at face sheets or wyes at cells 27 through 38. During the August-September 2010 timeframe, cells 36 through 38 of the Wet Barge Berth were removed and found to also have tailwall sheet damage.

190. At the North Extension, cells 9 through 12, 31 and 32 were removed in the August-September 2010 timeframe and found to have face and tailwall sheet damage. Further, cells 41 through 66 of the North Extension were found to have damage throughout the entire area, and cells 38 through 40 were also found to have face and tailwall damage.

191. Additionally, during excavation of fill placed by QAP at North Extension Cells 38 and 39, debris, including pieces of wood, steel scrap, steel sheet pile, and other foreign material was discovered in the fill. Driven and buried Z-pile was also found in critical areas planned for future underground utilities and other structures.

192. Given the extent of the defective work on the Project, in December 2010, ICRC sent a letter to QAP detailing the nature and extent of QAP's and MKB's deficient work. ICRC's letter also noted the ongoing and accruing damages that were being suffered as a direct result of QAP's and MKB's work.

193. Finally, ICRC's letter demanded that QAP return to the site to perform remedial actions to correct the non-conforming work. The letter noted that MKB had already refused to return to the Project site to correct its defective work.

ICRC Recants Prior Assertions and Begins to Cover Itself Against Liability

194. In November 2011, perhaps recognizing its own potential liability for the multiple design and construction failures on the Project, ICRC revoked its December 2010 demand to QAP and "suspend[ed] the direction that QAP repair and/or remove damaged and non-conforming work."

195. ICRC, in an attempt to relieve itself of any potential liability to QAP and MKB, and ignoring its own deficient performance and its own assertions that QAP and MKB were responsible for the problems plaguing the Project, would later file a certified pass-through claim to MarAd on behalf of QAP and MKB.

196. After this pass-through claim was denied by MarAd's Contracting Officer, ICRC would file an appeal with the Civilian Board of Contract Appeals ("CBCA"), wherein ICRC freely pinned all blame for the terrible state of the Project on PND and MarAd, even though ICRC was contractually responsible for PND's performance .

197. ICRC's Complaint before the CBCA was entirely self-serving and ignored those portions of QAP's and MKB's claims that pinned blame for difficulties on the Project squarely on ICRC.

198. The critical allegations set forth in the QAP and MKB claims pertained to purported design deficiencies, which are attributable to the designer of record, PND.

199. To date, however, and despite the assertions made in the QAP and MKB Claims, as well as ICRC's Complaint to the CBCA, ICRC has not made any effort to hold PND liable for the design deficiencies that served as the basis, in part, for the QAP and MKB Claims.

200. ICRC's inability to manage the Project has led to criticism from its own employees, including from its own Project Manager, who expressed his belief that the "ICRC organization [is] inexperienced, severely dysfunctional, and incapable of managing [the Project] work in a general contractor role competently and in a responsible fashion."

201. ICRC's Contract with MarAd was not renewed and expired on May 31, 2012.

Current Status of the Project Work and CH2M Hill's Suitability Analysis

202. The Project work is currently on hold, while MOA seeks to obtain a design that is suitable and appropriate for the seismological, geological, hydrological, and environmental conditions unique to the Port, and is otherwise constructible.

203. The completion date for the Project has been significantly pushed back, thereby delaying the Plaintiff's planned uses for the expanded Port facilities.

204. In November 2011, the United States Army Corps of Engineers ("USACE") entered into an agreement with MarAd whereby USACE agreed to enter into a contract with CH2M Hill. The USACE-CH2M Hill contract authorizes CH2M Hill to provide geotechnical, civil, structural, corrosion, coastal, and construction engineering services associated with the Project, in accordance with the scope of work defined in USACE Delivery W912PP-09-D-0016 Task Order No. ZJ02.

205. CH2M Hill's initial scope of work was limited to the use of information that had been collected by the original design team (*i.e.*, ICRC and PND) during design and construction of the OCSP® system, and subsequently expanded to include supplemental Project site explorations.

206. On February 14, 2013, CH2M Hill issued its Final Summary Report (the "Suitability Study") that it had prepared in accordance with its contract with the USACE.

207. CH2M Hill has confirmed that other than the Dry Barge Berth which has been successfully constructed and has adequate factors of safety for structural and global stability, the other sections of the Project -- the Wet Barge Berths and the North Extension -- have dramatic defects including twisted sheet piles, unzipped interlocks and design deficiencies that do not meet the adequate factors of safety, rendering these sections of the Project irreparable.

208. CH2M Hill's Suitability Study details various deficiencies in the Project's administration, design, and construction, which are attributable to the Defendants. These deficiencies include, but are not limited to:

- Producing an OCSP® design that is inadequate relative to global stability and seismic displacement based on the Project's design criteria;
- Prescribing that excessively tall sheet piles be driven from a dike on the land side of the wall, which caused significant sheet pile damage as unbalanced soil pressure was exerted on the OCSP® wall preventing the contractor from driving the sheet piles straight;
- Failing to establish a qualitative based process for selecting experienced contractors;
- Failing to inform QAP and MKB of issues encountered during the Dry Barge Berth phase of the Project, which impacted their work;
- Prescribing and permitting the use of riprap dikes and large fill materials in the same areas where future pile driving would occur;
- Prescribing use of a land based dike with a 1.5:1 slope was too steep and negatively impacted the ability to drive the sheet piles successfully;

- Prescribing that a vibratory hammer be employed first until refusal, prior to using the impact hammer contributed to slope movement during construction;
- Directing QAP and MKB to continue to drive piles after practical refusal had been achieved, damaging sheet piles;
- Failing to develop a testing protocol to verify the interlock integrity of driven sheet piles; and
- Ignoring signs that significant problems existed with the sheet pile operation and failing to conduct a rigorous analysis of the problems, which could have mitigated additional and more extensive problems.

COUNT I
Breach of Contract (ICRC)

209. Plaintiff re-alleges and reincorporates the allegations contained in all preceding Paragraphs of this Complaint as though fully set forth herein.

210. ICRC entered into a Contract with MarAd under which ICRC was, among other things, to provide program administration and management, design-build, and related procurement services with respect to both the Project's design and construction.

211. Accordingly, ICRC was responsible for the administration, design and construction of the Project.

212. Plaintiff is an intended third party beneficiary of the ICRC-MarAd Contract, as ICRC clearly intended to give Plaintiff the benefit of ICRC's promised performance under the ICRC-MarAd Contract.

213. ICRC breached the contractual duties owed to Plaintiff by, among other things, failing to administer, design and construct the Project in accordance with its contractual obligations, all as more fully set forth in this Complaint.

214. ICRC's breaches of the contractual duties owed to Plaintiff are the direct and proximate cause of significant damages Plaintiff has suffered, and will continue to suffer as substantial portions of work performed by ICRC have been damaged and rendered unusable,

Plaintiff's property has been damaged, Plaintiff's property has been lost, and costs have been occurred and will continue to be incurred to prevent risks to persons and/or property, Plaintiff has incurred significant costs investigating the damage and attempting to repair the damage, and Plaintiff will have to reconstruct the Port using completely different design and construction methods.

215. ICRC's breaches of its contractual duties owed to Plaintiff have caused Plaintiff to suffer, and continue to suffer damages in excess of $100,000.00, the exact amount to be proven at the time of trial.

COUNT II
Professional Negligence (ICRC)

216. Plaintiff re-alleges and reincorporates the allegations contained in all preceding Paragraphs of this Complaint as though fully set forth herein.

217. ICRC, a firm providing professional construction, engineering and technical services, was responsible for the administration, design and construction of the Project, and as such, had a duty to perform its responsibilities and obligations with the degree of care that a reasonably prudent, skilled, and qualified professional would exercise under the circumstances.

218. ICRC breached this duty of care by negligently administering, designing and constructing the Project, all as more fully set forth in this Complaint, and otherwise failing to perform its duties with the requisite degree of care that a reasonably prudent, skilled, and qualified professional would exercise under the circumstances.

219. ICRC's negligent performance of its professional duties are the direct and proximate cause of the significant damages and injuries Plaintiff has suffered, and will continue to suffer as substantial portions of the work have been severely damaged and rendered unusable, Plaintiff's property has been damaged, Plaintiff's property has been lost, and costs have been occurred and will continue to be incurred to prevent risks to persons and/or property. Plaintiff has incurred significant

costs investigating the damage and attempting to repair the damage, and Plaintiff will have to reconstruct the Port using a completely different design and construction method.

220. As a direct and proximate result of ICRC's breach of its professional duties, Plaintiff has suffered, and will continue to suffer actual damages in excess of $100,000.00, the exact amount to be proven at the time of trial.

COUNT III
Negligence (ICRC)

221. Plaintiff re-alleges and reincorporates the allegations contained in all preceding Paragraphs of this Complaint as though fully set forth herein.

222. ICRC was responsible for the administration, design and construction of the Project, and as such, had a duty of care to the Plaintiff in the performance of ICRC's responsibilities and obligations in connection with the Project as it was foreseeable that ICRC's negligence could cause harm to the Plaintiff, Plaintiff has clearly been injured by ICRC's negligence, ICRC's negligence and Plaintiff's injuries are closely connected, there is moral blame associated with ICRC's negligence, an adverse judgment against ICRC would prevent future harm, there is no burden in imposing a duty of care on ICRC, and ICRC could have protected itself against the risks it undertook by obtaining the requisite insurance.

223. ICRC breached its duty of care by negligently administering, designing and constructing the Project, all as more fully set forth in the Complaint.

224. ICRC's negligence directly and proximately caused Plaintiff to suffer damages to Plaintiff's property as Port acreage has been damaged, Plaintiff's property has been lost, and costs have been occurred and will continue to be incurred to prevent risks to persons and/or property.

225. As a direct and proximate result of ICRC's negligence, the Plaintiff has suffered, and will continue to suffer actual damages in excess of $100,000.00, the exact amount to be proven at the time of trial.

COUNT IV
Professional Negligence (PND)

226. Plaintiff re-alleges and reincorporates the allegations contained in all preceding Paragraphs of this Complaint as though fully set forth herein.

227. PND, a professional design and engineering firm, was responsible for the design and construction administration of the Project, and as such, had a duty to perform its responsibilities and obligations with the degree of care that a reasonably prudent, skilled, and qualified professional would exercise under the circumstances.

228. PND breached this duty of care by negligently designing and administering the construction of the Project, all as more fully set forth in this Complaint, and otherwise failing to perform its duties with the requisite degree of care that a reasonably prudent, skilled, and qualified professional would exercise under the circumstances.

229. PND's negligent performance of its professional duties are the direct and proximate cause of the significant damages and injuries Plaintiff has suffered, and will continue to suffer as substantial portions of the work have been severely damaged and rendered unusable, Plaintiff's property has been damaged, Plaintiff's property has been lost, and costs have been occurred and will continue to be incurred to prevent risks to persons and/or property, Plaintiff has incurred significant costs investigating the damage and attempting to repair the damage, and Plaintiff will have to reconstruct the Port using a completely different design and construction method.

230. As a direct and proximate result of PND's breach of its duties, Plaintiff has suffered, and will continue to suffer damages in excess of $100,000.00, the exact amount to be proven at the time of trial.

COUNT V
Negligence (PND)

231. Plaintiff re-alleges and reincorporates the allegations contained in all preceding Paragraphs of this Complaint as though fully set forth herein.

232. PND was responsible for the design and construction administration of the Project, and as such, had a duty of care to the Plaintiff in the performance of PND's responsibilities and obligations in connection with the Project as it was foreseeable that PND's negligence could cause harm to the Plaintiff, Plaintiff has clearly been injured by PND's negligence, PND's negligence and Plaintiff's injuries are closely connected, there is moral blame associated with PND's negligence, an adverse judgment against PND would prevent future harm, there is no burden in imposing a duty of care on PND, and PND could have protected itself against the risks it undertook by obtaining the requisite insurance.

233. PND breached its duty of care by negligently designing and administering the construction of the Project, all as more fully set forth in the Complaint.

234. PND's negligence directly and proximately caused Plaintiff to suffer damages to Plaintiff's property as Port acreage has been damaged, Plaintiff's property has been lost, and costs have been occurred and will continue to be incurred to prevent risks to persons and/or property .

235. As a direct and proximate result of PND's negligence, Plaintiff has suffered, and will continue to suffer actual damages in excess of $100,000.00, the exact amount to be proven at the time of trial.

COUNT VI
Negligent Misrepresentation (PND)

236. Plaintiff re-alleges and reincorporates the allegations contained in all preceding Paragraphs of this Complaint as though fully set forth herein.

237. PND represented to Plaintiff on multiple occasions, most notably in its 2008 Geotechnical Report co-authored with GeoEngineers, that the OCSP® system was suitable for use at the Project site..

238. PND's misrepresentations were based on false, negligent, and misleading assertions, including stating in the 2008 Geotechnical Report that the OCSP® design would work as intended, that it was easy to construct, that it would withstand certain seismic events, and that it was otherwise suitable for use on the Project.

239. PND's representations were false, negligent, material, and made in the course of its business and/or profession. .

240. Plaintiff reasonably and justifiably relied on PND's representations that the OCSP® design was suitable for use on the Project.

241. PND failed to exercise reasonable care or competence in making these representations and ascertaining the truth of these representations.

242. Plaintiff was unaware of the true facts regarding the OCSP design and would have acted differently if it had known the true facts.

243. PND's false, negligent, and misleading misrepresentations directly and proximately caused Plaintiff to suffer damages as substantial portions of work have been damaged and rendered unusable, Plaintiff's property has been damaged, Plaintiff's property has been lost, costs have been occurred and will continue to be incurred to prevent risks to persons and/or property, Plaintiff has

incurred significant costs investigating the damage and attempting to repair the damage, and Plaintiff will have to reconstruct the Port using completely different design and construction methods.

244. As a direct and proximate result of PND's false, negligent, and misleading misrepresentations, Plaintiff has suffered, and will continue to suffer actual damages in excess of $100,000.00, the exact amount to be proven at the time of trial.

COUNT VII
Professional Negligence (VECO)

245. Plaintiff re-alleges and reincorporates the allegations contained in all preceding Paragraphs of this Complaint as though fully set forth herein.

246. VECO, a professional engineering firm, was responsible for assessing critical design aspects of the Project, and as such, had a duty to perform its responsibilities and obligations with the degree of care that a reasonably prudent, skilled, and qualified professional would exercise under the circumstances.

247. VECO breached this duty of care by negligently performing its design services, all as more fully set forth in this Complaint, and otherwise failing to perform its duties with the requisite degree of care that a reasonably prudent, skilled, and qualified professional would exercise under the circumstances.

248. VECO's negligent performance of its professional duties are the direct and proximate cause of the significant damages and injuries Plaintiff has suffered, and will continue to suffer as substantial portions of work have been damaged and rendered unusable, Plaintiff's property has been damaged, Plaintiff's property has been lost, costs have been occurred and will continue to be incurred to prevent risks to persons and/or property, Plaintiff has incurred significant costs investigating the damage and attempting to repair the damage, and Plaintiff will have to reconstruct the Port using completely different design and construction methods.

249. As a direct and proximate result of VECO's breach of its duties, Plaintiff has suffered and will continue to suffer actual damages in excess of $100,000.00, the exact amount to be proven at the time of trial.

COUNT VIII
Negligence (VECO)

250. Plaintiff re-alleges and reincorporates the allegations contained in all preceding Paragraphs of this Complaint as though fully set forth herein.

251. VECO was responsible for assessing critical design aspects of the Project, and as such, had a duty of care to the Plaintiff in the performance of VECO's responsibilities and obligations in connection with the Project as it was foreseeable that VECO's negligence could cause harm to the Plaintiff, Plaintiff has clearly been injured by VECO's negligence, VECO's negligence and Plaintiff's injuries are closely connected, there is moral blame associated with VECO's negligence, an adverse judgment against VECO would prevent future harm, there is no burden in imposing a duty of care on VECO, and VECO could have protected itself against the risks it undertook by obtaining the requisite insurance.

252. VECO breached its duty of care by negligently performing its design services on the Project, all as more fully set forth in the Complaint.

253. VECO's negligence directly and proximately caused Plaintiff to suffer damages to Plaintiff's property as Port acreage has been damaged, Plaintiff's property has been lost, and costs have been occurred and will continue to be incurred to prevent risks to persons and/or property.

254. As a direct and proximate result of VECO's negligence, Plaintiff has suffered, and will continue to suffer actual damages in excess of $100,000.00, the exact amount to be proven at the time of trial.

COUNT IX
Negligent Misrepresentation (VECO)

255. Plaintiff re-alleges and reincorporates the allegations contained in all preceding Paragraphs of this Complaint as though fully set forth herein.

256. VECO represented to Plaintiff, as well as others, in its March 2007 geotechnical report, that the OCSP® system was suitable for use at the Project site.

257. VECO's representations were based on false, negligent, and misleading assertions set forth in its 2007 geotechnical report that the OCSP® design was suitable for use at the Project site.

258. VECO's representations were false, negligent, material, and made in the course of its business and/or profession.

259. Plaintiff reasonably and justifiably relied on VECO's representations that the OCSP® design was suitable for use on the Project.

260. VECO failed to exercise reasonable care or competence in making these representations and ascertaining the truth of these representations.

261. Plaintiff was unaware of the true facts regarding the OCSP design and would have acted differently if it had known the true facts.

262. VECO's false and misleading misrepresentations directly and proximately caused Plaintiff to suffer damages as substantial portions of work have been damaged and rendered unusable, Plaintiff's property has been damaged, Plaintiff's property has been lost, costs have been occurred and will continue to be incurred to prevent risks to persons and/or property, Plaintiff has incurred significant costs investigating the damage and attempting to repair the damage, and Plaintiff will have to reconstruct the Port using completely different design and construction methods.

263. As a direct and proximate result of VECO's false, negligent, and misleading misrepresentations, Plaintiff has suffered, and will continue to suffer actual damages in excess of $100,000.00, the exact amount to be proven at the time of trial.

COUNT X
Professional Negligence (GEOENGINEERS)

264. Plaintiff re-alleges and reincorporates the allegations contained in all preceding Paragraphs of this Complaint as though fully set forth herein.

265. GeoEngineers, a professional engineering firm, was responsible for assessing critical design aspects of the Project, and as such, had a duty to perform its responsibilities and obligations with the degree of care that a reasonably prudent, skilled, and qualified professional would exercise under the circumstances.

266. GeoEngineers breached this duty of care by negligently performing its design services, all as more fully set forth in this Complaint, and otherwise failing to perform its duties with the requisite degree of care that a reasonably prudent, skilled, and qualified professional would exercise under the circumstances.

267. GeoEngineers' negligent performance of its professional duties are the direct and proximate cause of the significant damages and injuries Plaintiff has suffered, and will continue to suffer as substantial portions of the work have been severely damaged and rendered unusable, Plaintiff's property has been damaged, Plaintiff's property has been lost, costs have been occurred and will continue to be incurred to prevent risks to persons and/or property, Plaintiff has incurred significant costs investigating the damage and attempting to repair the damage, and Plaintiff will have to reconstruct the Port using a completely different design and construction method.

268. As a direct and proximate result of GeoEngineers' breach of its duties, Plaintiff has suffered and will continue to suffer actual damages in excess of $100,000.00, the exact amount to be proven at the time of trial.

COUNT XI
Negligence (GEOENGINEERS)

269. Plaintiff re-alleges and reincorporates the allegations contained in all preceding Paragraphs of this Complaint as though fully set forth herein.

270. GeoEngineers was responsible for assessing critical design aspects of the Project, and as such, had a duty of care to the Plaintiff in the performance of GeoEngineers' responsibilities and obligations in connection with the Project as it was foreseeable that GeoEngineers' negligence could cause harm to the Plaintiff, Plaintiff has clearly been injured by GeoEngineers' negligence, GeoEngineers' negligence and Plaintiff's injuries are closely connected, there is moral blame associated with GeoEngineers' negligence, an adverse judgment against GeoEngineers would prevent future harm, there is no burden in imposing a duty of care on GeoEngineers, and GeoEngineers could have protected itself against the risks it undertook by obtaining the requisite insurance.

271. GeoEngineers breached its duty of care by negligently performing its design services on the Project, all as more fully set forth in the Complaint.

272. GeoEngineers' negligence directly and proximately caused Plaintiff to suffer damages to Plaintiff's property as Port acreage has been damaged, Plaintiff's property has been lost, and costs have been occurred and will continue to be incurred to prevent risks to persons and/or property.

273. As a direct and proximate result of GeoEngineers' negligence, Plaintiff has suffered, and will continue actual damages in excess of $100,000.00, the exact amount to be proven at the time of trial.

COUNT XII
Negligent Misrepresentation (GEOENGINEERS)

274. Plaintiff re-alleges and reincorporates the allegations contained in all preceding Paragraphs of this Complaint as though fully set forth herein.

275. GeoEngineers represented to Plaintiff in its 2008 Geotechnical Report co-authored with PND, that the OCSP® system was suitable for use at the Project site.

276. GeoEngineers' misrepresentations were based on false, negligent, and misleading assertions, including stating in the 2008 Geotechnical Report that the OCSP® design would work as intended, that it was easy to construct, that it would withstand certain seismic events, and that it was otherwise suitable for use on the Project.

277. GeoEngineers' representations were false, negligent, material, and made in the course of its business and/or profession. .

278. Plaintiff reasonably and justifiably relied on GeoEngineers' representations that the OCSP® design was suitable for use on the Project.

279. GeoEngineers failed to exercise reasonable care or competence in making these representations and ascertaining the truth of these representations.

280. Plaintiff was unaware of the true facts regarding the OCSP design and would have acted differently if it had known the true facts.

281. GeoEngineers' false, negligent, and misleading misrepresentations directly and proximately caused Plaintiff to suffer damages as substantial portions of work have been damaged and rendered unusable, Plaintiff's property has been damaged, Plaintiff's property has been lost,

costs have been occurred and will continue to be incurred to prevent risks to persons and/or property, Plaintiff has incurred significant costs investigating the damage and attempting to repair the damage, and Plaintiff will have to reconstruct the Port using completely different design and construction methods.

282. As a direct and proximate result of GeoEngineers' false, negligent, and misleading misrepresentations, Plaintiff has suffered, and will continue to suffer actual damages in excess of $100,000.00, the exact amount to be proven at the time of trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that judgment be entered in its favor and against Defendants, ICRC, PND, VECO, and GeoEngineers, jointly and severally, in the amount of Plaintiff's damages that it has suffered, and will continue to suffer as substantial portions of the work have been severely damaged and rendered unusable, Plaintiff's property has been damaged, Plaintiff's property has been lost, and costs have been occurred and will continue to be incurred to prevent risks to persons and/or property, Plaintiff has incurred significant costs investigating the damage and attempting to repair the damage, and Plaintiff will have to reconstruct the Port using a completely different design and construction method, including attorney's fees and pre-judgment interest in an amount to be proven at trial, but presently believed to be in excess of $100,000.00 for each defendant, the exact amount to be proven at the time of trial, plus such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff, Anchorage, by and through its counsel, hereby requests and demands a trial by jury in the above-entitled matter on all issues so triable.

DATED this 7th day of November, 2014.

MUNICIPALITY OF ANCHORAGE,

By counsel,

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Municipal Attorney

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing First Amended Complaint was served by CM/ECF on the following:

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This First Amended Complaint will be served upon the following:

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/s/ Jason N. Smith
Jason N. Smith